



LEGAL PROTECTION FOR *HAJJ* PILGRIMS THROUGH REGIONAL REGULATION

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Abstract

The Law on the Hajj Administration mandates the management of the Hajj pilgrimage is organized by the government. This management includes the coaching, services, and protections of the pilgrims of their departure from Indonesia to Saudi Arabia, along in Saudi Arabia, and returning to the homeland. This law also stipulates that the authority for Hajj Administration is not only vested to the Ministry of Religious Affairs but also may involve the local government. This article aims to look at the role of local governments in providing service assistance and legal protection to the conduct of Hajj pilgrimage by means of regional regulations or bylaws. Using a normative approach, this article analyzes the extent to which the importance of bylaws in helping implement services for pilgrims. The results of this study confirm that there are 3 important arguments for why the local government must issue regional regulations to provide legal services and protection for

pilgrims. First, philosophically, the pilgrimage journey does not depart from Jakarta only, but through the origin area which is still in the corridors of power of the local government. Second, sociologically, it is a form of the local government responsibility to the local people who perform the Hajj pilgrimage. Third, juridically, bylaws should regulate technical matters in order to provide optimal service in the conduct of the Hajj pilgrimage which is pursuant to the Law and regulations on Hajj pilgrimage in Indonesia.

Keywords: *legal protection, Hajj pilgrimage, regional regulation.*

Abstrak

Undang-Undang penyelenggaraan ibadah haji mengamanatkan pengelolaan pelaksanaan ibadah haji yang meliputi pembinaan, pelayanan, dan perlindungan jamaah haji semenjak dari tanah air, di Arab Saudi, hingga kembali ke tanah air. Undang-undang ini juga memerintahkan kewenangan pelayanan masalah haji tidak hanya pada kementerian Agama, namun boleh melibatkan pemerintah daerah. Artikel ini bertujuan untuk melihat peran pemerintah daerah dalam memberikan bantuan layanan dan perlindungan hukum melalui peraturan daerah. Dengan menggunakan pendekatan normatif, artikel ini menganalisis sejauh mana pentingnya peraturan daerah menjadi peraturan di tingkat daerah dalam membantu melaksanakan pelayanan terhadap jamaah haji. Hasil dari artikel ini menegaskan bahwa terdapat 3 argumen penting mengapa Pemerintah Daerah harus mengeluarkan peraturan daerah guna memberikan pelayanan dan perlindungan hukum bagi jamaah haji. Pertama, secara filosofis perjalanan ibadah haji tidak berangkat dari Jakarta, tetapi melalui daerah asal yang masih dalam koridor pemerintah daerah. Kedua, secara sosiologis sebagai bentuk tanggung jawab Pemerintah Daerah kepada masyarakat daerah yang menunaikan ibadah haji. Ketiga,

secara yuridis PERDA mengatur secara teknis dalam rangka memberikan pelayanan yang optimal dalam penyelenggaraan ibadah haji sesuai dengan Undang-Undang Republik Indonesia Nomor 13 Tahun 2008 tentang Penyelenggaraan Ibadah Haji dan Peraturan Pemerintah Republik Indonesia Nomor 79 Tahun 2012 tentang Pelaksanaan Undang-Undang Republik Indonesia Nomor 13 Tahun 2008 tentang Penyelenggaraan Ibadah Haji.

Kata Kunci: *perlindungan hukum, ibadah haji, peraturan daerah.*

A. Introduction

The Constitution of the State of the Republic of Indonesia Year 1945 (1945 Constitution) guarantee a freedom of religion for every citizen and give everyone a freedom to express their religious belief according to their religion. Adherents of religions in Indonesia constitutionally acquire some legal protections from the state to be able to fulfil religious obligation in accordance to provisions of their religious respective, especially for Muslims people as the majority population in Indonesia.

One of the obligation of religious rituals in Islam is *Hajj* pilgrimage. The substance of the *Hajj* is to perform certain rituals which are carried out in Saudi Arabia¹ in a certain month for several days. The peak of this worship is *wuqūf* in *Arafah*. Muslims from all corners of the world gather in one place in Arafat to jointly carry out worship in accordance to some provisions of Islamic law.²

¹ Musferah Mehfooz, Fatima Javaid, and Iffet Khalid, "Similarity in the Philosophy of Worship in Torah and Quran," *Journal of Islamic Studies and Culture*, Vol. 2, no. 2 (June 2014): p. 168.

² Amani S. Alqahtani and et.al., "Australian Hajj Pilgrims' Infection Control Beliefs and Practices: Insight with Implications for

When the *Hajj* season come, more than three million Muslims people from several countries gather for about one month in Makkah and Madinah.³ Muslims meet and gather into a bond of *ukhuwwah* Islamiyah, develop a sense of unity, worship and visit some historical holy places.⁴ *Hajj* is a forum for meeting Muslims around the world. There is no dichotomy between rich and poor, officials and people. No matter what they are, and where they from, Muslim community from various ethnics, cultures and countries have the same goal in fulfilling the fifth pillar of Islam.⁵

The obligation to perform a once-in-a-lifetime *Hajj* for every Muslim who is capable of having provision, physically and mentally healthy, and having expenses for families left behind.⁶ There are such "capable" criteria because of some Muslims outside Saudi Arabia, the *Hajj* pilgrimage worship requires a more financial support for travel costs. This financial ability also makes the *Hajj* a prestigious worship. Not all Muslims can fulfil the *Hajj* pilgrims even though they intended it so hard because reasoning of completing the five pillars of Islam.

The *Hajj* is a private ritual worship because it is a direct relationship between religious believers and the God. Although it is private sector, the implementation requires

Public Health Approaches," *Journal Travel Medicine and Infectious Disease*, Vol. 17, no. 1 (2015): p. 2.

³ Annelies Wilder-Smith and et.al., "Meningococcal Carriage in Umra Pilgrims Returning from Saudi Arabia," *Journal of Travel Medicine*, Vol. 10, no. 3 (2003): p.147.

⁴ Mehfooz, Javaid, and Khalid, "Similarity in the Philosophy of Worship in Torah and Quran," p.154.

⁵ David Clingsmith, Asim Ijaz Khwaja, and Michael Kremer, "Estimating The Impact of The Hajj: Religion And Tolerance In Islam's Global Gathering," *The Quarterly Journal of Economics*, (August 2009), p.1134.

⁶ Salim Baharoon and et.al., "Severe Sepsis and Septic Shock at the Hajj: Etiologies and Outcomes," *Journal Travel Medicine and Infectious Disease* Vol. 7, no. 1 (2009): p. 248.

the role of the state because it concerned with international order. The involvement of the state here is a form of state service and care to its citizens to practice their religious belief as what has guaranteed by the Constitution.

As an implementation of legal protection by the state, Indonesia has some experience in organizing Muslim people in *Hajj* pilgrimage. The management of *Hajj* was initially organized by private organizations and parties. The earlier involvement of the state for *Hajj* administration was conducted under the President Soeharto regime through the Kementerian Agama Republik Indonesia (Ministry of Religious Affairs of The Republic of Indonesia, MORA). It means that the *Hajj* affairs was previously regulated by presidential and ministerial decrees. The first legislation on *Hajj* pilgrimage administration was passed as Law no 17 Year 1999 on the Administration of *Hajj*. This law was then revised with Law No 13 of 2008 on the Administration of *Hajj* (2008 *Hajj* Administration Law.⁷ With the existence of legal protection from the state, it is expected that Muslims who perform the *Hajj* could implement their religious worship without any administration obstacles.

The implementation of *Hajj* in Indonesia still has several problems both in the aspects of regulation and policy governance, guidance, services, protection of pilgrims, and supervision. Regulatory aspects as stated in the provisions of Article 32 of the 2008 *Hajj* Administration Law that immigration regulations are no longer relevant to the current conditions of *Hajj*. Since 2009, *Hajj* pilgrims has been revising a regulation on using a green passport issued by the Ministry of Religious Affairs. Today, *Hajj* pilgrims

⁷ Alfitri, "Religion and Constitutional Practices in Indonesia: How Far Should the State Intervene in the Administration of Islam?," *Asian Journal of Comparative Law*, January 9, 2019, 1–25, <https://doi.org/10.1017/asjcl.2018.20>.

use passport issued by the Immigration Office, as what the Government of the Kingdom of Saudi Arabia requested for.

A very crucial problem is about quotas. The number of quota is very limited and waiting lists are so long that a solution is needed. Although the government has applied to be given an additional quota, it is not too significant to reduce the waiting period. It needs appropriate and strict policies to overcome them.⁸ Another problem is the transportation problem of departure, accommodation, beverage consumption and transportation from departure preparation, along in Saudi Arabia, and trip back to the country. Some problems need a policy reform from the government to be able to overcome these problems.

Because of many problems in the administration of the *Hajj*, it demands an appropriate policy from the government in the context of providing legal protection for pilgrims. One of some efforts that possible to do is by involving the regional government in providing facilities so that the implementation of the pilgrimage takes place in harmony with the substance of the series of worship activities of *Hajj*. The form of the active role of the Regional Government through facilitation that has not been accommodated by the Central Government. In order to comply with the legal corridor, a legal basis is needed through legal products for the Regional Government to facilitate the implementation of *Hajj*.

Looking at some problems above, the study of legal protection for pilgrims through the Regional Regulation is very important. Legal protection for pilgrims is intended to guarantee the rights of pilgrims and ensure the

⁸ Zubaedi, "Analisis Problematika Manajemen Pelaksanaan Haji Indonesia; Restrukturisasi Model Pengelolaan Haji Menuju Manajemen Haji Yang Modern," *Jurnal Manhaj*, Vol. 4, no. 3 (December 2016): p. 190.

implementation of the *Hajj* properly and in accordance with Islamic law. From the description above, some questions emerged can be discussed are: 1) What is the legal basis for the role of the government in the process of organizing the *Hajj* in Indonesia? 2) What is the urgency of the Regional Government in providing legal protection for the implementation of the *Hajj* through Regional Regulation?

This study includes the type of normative legal research, because the studied is the legal aspects of written law. The approach is also normative by using legal principles. The data used are secondary data in the form of written documents obtained through library search. The method of analysis used induction-interpretation-conceptualization by using interactive model, namely data reduction, data presentation and conclusion.

B. Legal Basis of the Role of the Regional Government in the Process of Organizing *Hajj*

The legal basis for organizing *Hajj* in Indonesia is the 2008 *Hajj* Administration Law. This law regulates a series of activities to manage the implementation of the *Hajj* which include the formations, services and protection of pilgrims from the country, in Saudi Arabia, and returning back to their homeland.⁹

The organizing of the *Hajj* in Indonesia was carried out by the Central Government through the Ministry of Religious Affairs. The organizer coordinator in the area is the Regent. As a support for the smooth implementation of the *Hajj* pilgrimage in the area, the Regent formed the *Panitia Penyelenggara Ibadah Haji* (PPIH, *Hajj* Organizing Committee), which involved elements of the Regional

⁹ M. Taufik Hidayatulloh, "Implementasi Bimbingan Manasik Haji Oleh Kantor Kementerian Agama Di Kabupaten Gorontalo," *Jurnal SmART*, Vol. 02, no. 02 (December 2016): 168.

Government, the Ministry of Religious Affairs Office, and other related elements. PPIH's task is to provide guidance, service and protection, as well as control and coordinate the operational implementation of the *Haji*.

PPIH is responsible to the Regent, and in carrying out his duties is assisted by *Haji* officers appointed by the Regent to accompany pilgrims during the pilgrimage. *Haji* officers consist of the *Tim Pemandu Haji Daerah* (TPHD, Regional Guidance Team for *Haji*), and/or the *Tim Kesehatan Haji Daerah* (TKHD, Regional Health Team for *Haji*).

The administration of the *Haji* by the government is designed in a series of processes which include:

1. *Haji* Registration Mechanism

The registration process is the first stage of the overall administration of the *Haji*. *Haji* pilgrim candidates are direct and proactive with the government as the organizer of the pilgrimage through the Ministry of Religious Affairs Office. *Haji* registration is carried out by the government continuously, continuously and regularly. Included in the registration is giving portion numbers as proof of their rights and obligations as pilgrims after fulfilling the terms and procedures set by the government.¹⁰

The principle adopted in the pilgrimage registration is a system of serial registration numbers who will be served first (first come first served). Technically, registration is served every working day at regional office of the Ministry of Religious, carried out online through the Sistem Informasi dan Komputerisasi

¹⁰ Achmad Nidjam, "Efektifitas Prosedur Pendaftaran Haji Melalui Rekayasa Ulang Proses Bisnis," *Jurnal Penamas*, Vol. 28, no. 03 (December 2015): p. 416.

Haji Terpadu (SISKOHAT, Information System and Integrated *Hajj* Computerization). *Hajj* registration is opened throughout the year, there is no limit when registration is closed and there are no restrictions on how many quotas are accepted. The main requirements must be fulfilled like well physically and healthy, and 18 years old at least. Then, the prospective *Hajj* pilgrims has the financial ability to pay an initial deposit of IDR 25,000,000.00 (approximately USD 1,800) for securing a spot on waiting list.¹¹ This amount has a legally process termed by *Biaya Penyelenggara Ibadah Haji* (BPIH, *Hajj* Administration Fee) which set by the government based on the recommendation of the Minister of Religious Affairs and must be approved by *the Dewan Perwakilan Rakyat* (DPR, People's Representative Council).

The impact of this bailout or BPIH is that those who actually have the financial ability to be hindered by the departure of their *Hajj* because they are late in registering and paying money for the number of pilgrimage portions. This delay usually occurs because prospective pilgrims want to avoid debt so that they do it by saving money first.¹²

Provisions about *Hajj* registration is regulated in the Regulation of the Minister of Religious Affairs of the Republic of Indonesia Number 14 Year 2012 and Regulation of the Minister of Religious Affairs of the Republic of Indonesia Number 15 Year 2012. *Hajj* registration is divided into two activities, namely:

¹¹ Achmad Muchaddam Fahham, "Penyelenggaraan Ibadah Haji: Masalah Dan Penanganannya," *Jurnal Kajian*, Vol. 20, no. 3 (September 2015): p. 204.

¹² Sopa and Siti Rahmah, "Studi Evaluasi Atas Dana Talangan Haji Produk Perbankan Syariah Di Indonesia," *Jurnal Ahkam*, Vol. XIII, no. 2 (July 2013): p. 311.

regular *Hajj* registration and special *Hajj* registration whose process flow has similarities. The difference lies in the location where you register. Regular *Hajj* is conducted at the District / City Office of the Ministry of Religious Affairs, while special *Hajj* can be held at the Directorate General of *Hajj* and Umrah Administration or the Regional Office of the Ministry of Religious Affairs.¹³ However, some detailed matter in this Regulation has revised like nullifying the transit hotel for special *Hajj*.

Hajj registration procedure as stipulated in the Regulations the Minister of Religious Affairs Regulation Number 14 Year 2012 in its implementation still found shortcomings and weaknesses, seemed complicated and complicated so that it made it difficult for the community. The demand for the improvement of registration services in accordance with the development of community needs and fulfilling the principles of public services that bring closer and shorten the service process needs to be done as a concrete manifestation of the program of accelerating public services (quick wins). Thus the process of *Hajj* registration services will be realized quickly, easily, cheaply, transparently, surely, and affordable as confirmed in the Legal of the Republic of Indonesia Number 25 Year 2009 about the Public Services¹⁴.

2. Cost and Administration fee of the *Hajj*

The funding of the pilgrimage is from pilgrims who pay a certain amount of money to the Ministry of Religious Affairs through state or private banks

¹³ Nidjam, "Efektifitas Prosedur Pendaftaran Haji Melalui Rekayasa Ulang Proses Bisnis," p. 417–18.

¹⁴ Nidjam, p. 414.

appointed by the government. Appointment of the bank receiving the deposit by the Minister of Religious Affairs after obtaining the consideration of the Governor of Bank Indonesia. The determination of BPIH is carried out by the President at the suggestion of the Minister of Religious Affairs after obtaining the approval of the DPR of the Republic of Indonesia, which is subsequently used for the purpose of organizing the *Hajj*. BPIH compilation is carried out consultatively between the Government and the DPR by taking into account the components of air transport costs, fees in Saudi Arabia and domestic costs such as transportation costs from Indonesia to Saudi Arabia going home, accommodation while in Saudi Arabia, transportation in Saudi Arabia, obligations to the Government of Saudi Arabia, and other fees required¹⁵.

Since 2001 BPIH has been determined in the form of IDR and USD, for which payments are adjusted to the prevailing exchange rates determined by Bank Indonesia on the day the payment is made. Each component of the BPIH calculation is:

First, the cost of air transportation, which is the cost that must be paid by the government to the airlines that transport pilgrims who are carried out charter between the government and the designated airline. All components included in air freight costs are paid to the airline. Air freight costs are the largest component in the arrangement of BPIH, between 40% - 48%.

Second, the costs in Saudi Arabia, namely the costs used for the operation of the *Hajj* in Saudi Arabia, which must be paid by the Indonesian government for

¹⁵ Achmad Nidjam, "Akuntabilitas Informasi Biaya Penyelenggaraan Haji," *Jurnal Ilmu Administrasi*, Vol. 14, no. 1 (June 2017): p. 70.

the provision of *Hajj* services in Saudi Arabia. These costs are divided into compulsory fees, termed *al-maslahah al-‘āmmah* (general service), accommodation in Makkah, Madinah and Madinah *al-Hujjāh* (pilgrims), consumption and transportation, and operational costs. Operational costs include employee expenditure or officer honorarium, goods shopping, travel expenses, rental and maintenance costs for organizational office and living costs for pilgrims along in Saudi Arabia.

Third, domestic costs, is the costs used for the operation of *Hajj* operations in Indonesia, which consist of central operational costs, operational costs at embarkation, regional operational costs and airport tax. Included in domestic costs is considering the cost of providing medicines and medical devices while in the country and in Saudi Arabia. In addition, each pilgrim is given a living cost of SAR 1,500 for any living needs in Saudi Arabia.

3. Guidance on *Hajj* Rituals

Guidance before departure is made for pilgrims who are entitled to pay off BPIH in the current year's quota allocation. The guidance method is held directly and indirectly. Direct guidance in the form of face to face, while indirectly carried out through the media. Guidance material includes pilgrimage, pilgrimage trips and services, health and the rights and obligations of pilgrims. In accordance with Regulation of Minister of Religious Affairs of the Republic of Indonesia Number 14 Year 2012 about the Organization of Regular *Hajj*, that the guidance that is the duty of the Ministry of Religious Affairs includes the rituals of *Hajj*, travel and *Hajj* services, health, and the rights and obligations of pilgrims.

Guidance for pilgrims organized by the community is carried out by the Kelompok Bimbingan Ibadah Haji (KBIH, *Hajj* Guidance Group). KBIH's involvement in the implementation of *Hajj Manāsik* training is regulated in Article 30 paragraph (1) of the 2008 *Hajj* Administration Law which states that in the framework of *Hajj* pilgrimage, the community can provide *Hajj* guidance, both individually and by forming guidance group. The implementation of the guidance of pilgrims by the community is guided by the pattern of pilgrimage guidance set by the Government. The cost of organizing *Manāsik* guidance by KBIH comes from pilgrims who are pilgrims.¹⁶

4. Guidance and Information on the Pilgrimage

Sociologically, Indonesian pilgrims come from diverse social, educational, cultural and ethnic backgrounds. People's Knowledge about *Hajj* is very different. The majority prospective pilgrims are elementary school educated. This fact demands the implementation of the procedures for the implementation of the *Hajj*, the provision of books on the procedures for the pilgrimage, and other technical debriefings related to the use of restrooms in aircraft, hotels and so forth. *Hajj* pilgrims also need to be introduced to the traditions and culture of Arabic or other countries, because they will interact with a variety of people from diverse cultures and traditions.¹⁷

The pattern of government development with two systems: *First*, the group system. Fostering the group system is held by the way the pilgrims are divided into

¹⁶ Fahham, "Penyelenggaraan Ibadah Haji: Masalah Dan Penanganannya," p. 207.

¹⁷ Fahham, 206.

guided groups consisting of 50 people guided by one mentor. Each group is divided into 5 teams and each team consists of 10 people. Coaching by each team of at least 10 meetings, each meeting takes 3 hours. *Second*, the mass system. The mass system development is carried out by the regional office of Ministry of Religious Affairs to strengthen the rituals of *Hajj*, the formation of teams and groups and flying groups.

Submitting information about *Hajj* to the community should be emphasized in the formation of quality pilgrims, socializing government policies and capturing input from the community for efforts to improve services and implementation of worship. Unfortunately, information aspects have shown the opposite. For example, information about the amount of the cost of *Hajj* administration that reaches to people is not complete, because it focuses more on the amount of direct costs and overrides indirect costs. As an implication, the cost of *Hajj* administrations seems cheaper than the costs that should be borne by the prospective *Hajj*.¹⁸

C. The Role of Regional Governments in Providing Legal Protection through Regional Regulations

1. Legal protection

Indonesia is a democratic legal state, and democracy is based on legal. Understanding the rule of law as stated in the provisions of Article 1 paragraph (3) of the 1945 Constitution relating to the welfare state. Law becomes a determinant according to the principles of democracy and doctrine rule the rule of law, and not man. The legal position is very high (supremacy of law),

¹⁸ Nidjam, "Akuntabilitas Informasi Biaya Penyelenggaraan Haji," p. 70.

the existence of equality in law and government (equality before the law) and applies the principle of legality in all forms and practices (due process of law).¹⁹

The rule of law in Indonesia has the same meaning as the rule of law and *rechtsstaat*, although in fact the two terms are given to designate two different models of legal systems. The term rule of law for Anglo Saxon legal systems that adheres to common law. Whereas the term *rechtsstaat* is given for Continental European legal systems that embrace civil law.²⁰

State legal discourse emerged in the 19th century. Compared to the discourse of democracy, the constitution, and the constitutionality, the discourse on the rule of law is classified as young.²¹ The concept of the rule of law is related to the term nomocracy or legal sovereignty which means that the determinant in administering state power is law. Laws in power, none of which are above the law. The implementation of government power must be based on law, not the decree of the head of state. The state and its institutions in acting must be based on law and can be legally accountable. Power runs a government based on legal sovereignty (the rule of law) with the aim of organizing legal order.²²

¹⁹ Achmad Irwan Hamzani, "Perlindungan Hukum Terhadap Harta Benda Wakaf Sebagai Aset Publik Di Kecamatan Wiradesa Kabupaten Pekalongan," *Jurnal Ijtihad*, Vol. 16, no. 2 (2016): 159–77, <https://doi.org/DOI: 10.18326/ijtihad.v16i2.p. 159-177>.

²⁰ Achmad Irwan Hamzani, "Towards Indonesia As A State Law Be Happiest People," *Journal International Journal of Business, Economics and Law*, Vol. 16, no. 4 (2014): 152.

²¹ A. Mukthie Fadjar, *Tipe Negara Hukum*, (Malang: Bayumedia Publishing, 2003), p.10.

²² M. Tahir Azhary, *Negara Hukum: Suatu Studi Tentang Prinsip-Prinsipnya, Dilihat Dari Segi Hukum Islam, Implementasinya Pada Periode Negara Madinah Dan Masa Kini*, (Bogor: Kencana, 2003).

If the state is based on law, the state government must be based on a constitution as the basis for the administration of government. State constitution as a means of unifying the nation. Relations between citizens and the state, relations between state institutions and the performance of each element of power are in a system of rules that are agreed upon and upheld²³.

Legal protection becomes very essential to the subject and object of the law in the state of law.

Law as a joint rule for each citizen. Relations between fellow legal subjects will occur a reciprocal relationship between citizens and citizens, and citizens with the community represented by the state that will give birth to rights and obligations. Legal protection is the protection of people's rights as citizens in order to enjoy all their rights. In addition, legal protection is also a legal effort that must be given by law enforcement officials to provide a sense of security both mindfully and physically from interference and various threats from any party.

According to Soerjono Soekanto, legal protection is all efforts to fulfil rights and to aid in providing security to witnesses and/or victims. Legal protection for victims of crime can be realized in various forms, such as through the provision of restitution, compensation, medical services, and legal assistance.²⁴ Muchsin states that legal protection is an activity to protect individuals by harmonizing the relationship of

²³ Hamzani, "Towards Indonesia As A State Law Be Happiest People," p. 153.

²⁴ Soerjono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta: UI Press, 1984), p. 133.

values or rules that manifest in attitudes and actions in creating order in the inter-human interaction.²⁵

Philipus M. Hadjon divides legal protection in two types, namely: *First*, preventive legal protection. *Second*, repressive legal protection. Preventive legal protection for the people is given the opportunity to submit an objection or opinion before a government decision gets a definite form. Preventive legal protection aims to prevent the dispute case. On the contrary, repressive legal protection aims to resolve the tragedy. Preventive legal protection is very significant for government actions based on freedom of action, because with preventive legal protection the government is encouraged to be careful in making decisions based on discretion. With this understanding, handling legal protection for the people by the government and society, including the categories of preventive and repressive legal protection.²⁶

The purpose of the rule of law is to organize and maintain legal order so that all aspects of state life run according to the law. The rule of law guarantees legal order in society. The aim of the Indonesian state as a rule of law also creates a just and prosperous society both material and spiritual. The concept of *rechtsstaat* for Indonesia can be categorized as a welfare state (*verzorgingsstaat*), a country that is materially and spiritually prosperous.²⁷

²⁵ Muchsin, "Perlindungan Dan Kepastian Hukum Bagi Investor Di Indonesia" (Tesis, Magister Ilmu Hukum Program Pascasarjana Universitas Sebelas Maret, 2003), p. 14.

²⁶ Barzah Latupono, "Perlindungan Hukum Dan Hak Asasi Manusia Terhadap Pekerja Kontrak (Outsourcing) Di Kota Ambon," *Jurnal Sasi*, Vol. 17, no. 3 (September 2011): p. 67.

²⁷ Hamzani, "Towards Indonesia As A State Law Be Happiest People."

Legal protection is given to legal subjects in the form of preventive and repressive regulations, both oral and written. The basic picture of legal functions basically provides justice, order, certainty, expediency and peace. Justice is the purpose of the formation of law. Law is held as an effort to achieve justice. Without legal justice nothing is worth anything. The principle of law is not only about the punishing, but also contains moral values to impose behaviour people for education towards security rather than violence and hostility.²⁸

Thus, legal protection in the rule of law as a guarantee of protection of the rights harmed by others and as a means of providing security for subjects and legal objects. The rule of law makes instruments of legal protection as safeguards against legal subjects and objects with preventive and repressive means. Protection provides a guarantee that the law can provide a fairness, benefit and certainty.

2. Legal protection through Regional Regulations

The implementation of the pilgrimage must be directed at continuous quality improvement in aspects of coaching, service and protection for pilgrims. This has consequences for the Government through the Ministry of Religious Affairs to continue to improve the management of *Hajj*.²⁹ The Law of Republic of Indonesia Number 13 Year 2008 about the Organization of *Hajj* in its implementation has not fully been able to present the implementation of the *Hajj* professionally.

²⁸ Fokky Fuad Wasitaatmadja, *Filsafat Hukum: Akar Religiositas Hukum*, (Jakarta: Kencana, 2015), p. 47–68.

²⁹ Sri Pujiyati, “Analisis Kepuasan Jamaah Haji Tahun 2011/1432 H Terhadap Kualitas Pelayanan Pemerintah Studi Kasus Jamaah Haji Kota Pangkalpinang,” *Jurnal Bisnis Dan Manajemen Eksekutif*, Vol. 1, no. 1 (2014): p. 8.

The direction of regulation should be to provide protection for pilgrims in the process of administering the pilgrimage both in the homeland and in the holy land. This is the right of pilgrims to be given by the Government. Fulfilment of the rights of pilgrims is the responsibility of the government, especially in terms of document making, administration of pilgrimage travel, guidance, procurement of air and land transportation, provision of accommodation, provision of catering, and *Hajj* health checks. The amount of costs incurred to carry out the pilgrimage should be balanced with services that are balanced with the amount of the cost of the pilgrimage.³⁰ There are still many complaints experienced by pilgrims related to service.

There are several causes of complaints from pilgrims, such as transportation, accommodation and consumption problems. Other complaints about the limited means of guidance, capacity constraints counsellors, guidance materials are relatively large, but not worth the time provided, the schedule inadequate religious practices, and other issues.³¹

The central and regional governments have a very significant role in the administration of the *Hajj* not only in terms of control, but also operations. The Ministry of Religious Affairs as a central government implementer has a dual role, namely as the regulator that has the authority to issue policies, and as the

³⁰ M. Shidqon Prabowo, "Perlindungan Hukum Jama'ah Haji Indonesia Dalam Perspektif Perlindungan Konsumen," *Jurnal Ilmu Hukum Litigasi*, Vol. 15, no. 1 (April 2014): p. 2096.

³¹ Hidayatulloh, "Implementasi Bimbingan Manasik Haji Oleh Kantor Kementerian Agama Di Kabupaten Gorontalo," p. 169.

operator that directly implements the management and operation of the implementation of the pilgrimage.³²

Based on the 2008 *Hajj* Administration Law, it is emphasized that the pilgrimage transportation to Embarkation and from Debarkation is the responsibility of the Regional Government. Each region must be committed in the implementation of the *Hajj* in terms of the cost of facilitation of the *Hajj* starting from the cost of departure in the area to Embarkation and vice versa from Embarkation to the area. The costs borne by the region are ranging from transportation costs (bus rental), *vooridjer* fees, health personnel, security personnel, escort staff, and beverage costs which are all charged to the Regional Budget (APBD). The legal cost must be made through a Regional Regulation. The implementation of the *Hajj* in the regions stipulated in the Regional Regulation is intended so that the implementation of the *Hajj* in the area has a strong legal basis.

Hajj pilgrims are local people, so the regional government must provide legal protection if the community experiences various problems in carrying out the *Hajj*.³³ Legal umbrella in the form of a Regional Regulation to provide legal protection for pilgrims during the pilgrimage, both from the registration process to the completion of the pilgrimage.

Regional Regulation is one form of responsibility of the local government to the community in providing services and legal protection. In addition, Regional Regulations also serve as policy instruments in implementing broad and responsible regional autonomy,

³² Prabowo, "Perlindungan Hukum Jama'ah Haji Indonesia Dalam Perspektif Perlindungan Konsumen," p. 2100.

³³ Prabowo, p. 2112.

as well as harmonizing various interests. Regional regulations in the context of legal protection for pilgrims are very useful in providing optimal services in the implementation of the 2008 *Hajj* Administration Law and Government Regulation of the Republic of Indonesia Number 79 Year 2012 about the Implementation of the 2008 *Hajj* Administration Law.

The change in the paradigm of constitutional law caused by reforms to the amendments to the 1945 Constitution brought the consequences of democracy in the process of establishing Regional Regulations. The formation of legislation has to merge two dimensions; normative dimension at the formal level and responsive dimension at the material level of democracy. The establishment of good legislation is those which responsive to the needs of people's aspirations towards happy justice.³⁴

Regional Regulations are all regulations made by the local government to implement other higher-level regulations. Material of Regional Regulations in general contains, among others: *First*, matters relating to regional households and matters relating to regional government organizations. *Second*, matters relating to tasks and assistance (*mendebewindl*). Regional Regulation is a legal product of the regional government in the framework of implementing regional autonomy, namely implementing the rights and authority to regulate and manage their own domestic affairs as well as the legality to support autonomous regions.³⁵

³⁴ Rodiyah, "Aspek Demokrasi Pembentukan Peraturan Daerah Dalam Perspektif Socio Legal," *Jurnal Masalah-Masalah Hukum*, Vol. 41, no. 1 (2012): p. 146.

³⁵ Achmad Irwan Hamzani, "Pengembangan Model Perlindungan Hukum Terhadap Harta Benda Wakaf Sebagai Aset Publik Di

Each region also has problems that cannot be generalized. Regions are given the authority to regulate certain matters which are seen as peculiarities. The preparation and formation of Regional Regulations cannot be separated from the influence of the principles of distinctiveness or local wisdom. Normatively, the material of Regional Regulations can be in the form of a delegation to the Legal, due to regional initiatives, elaboration of customs, and elaboration of religion.

Establishment of Regional Regulations is an important part of establishing law in the region and is the essence of "legal formulation" which must be scheduled by the regional government in planning the development of the region. By setting the law can also be understood that the regional development plan should be set out in a regulation which is charged with planning norms attention to the development of society (*social dynamics*).³⁶

There are three reasons that require the Regional Government to issue regional regulations to provide legal protection for pilgrims, namely: *First*, philosophically the government is obliged to provide safe, orderly and smooth services for the implementation of the pilgrimage, so that pilgrims can feel the serenity and comfort of worship. Regional Governments take responsibility, one form of responsibility is to provide legal protection in the form of regional regulations. *Second*, sociologically as a form of responsibility of the Regional Government to the people who perform the *Hajj*. The Regional Government provides financial assistance for the smooth

Kecamatan Wiradesa Kabupaten Pematang, " *Jurnal Harmoni*, Vol. 15, no. 1 (December 2016).

³⁶ Hamzani.

implementation of the *Hajj* pilgrimage in areas ranging from departure to pick-up. *Third*, juridically, the Regional Regulations regulate technically in order to provide optimal services in the implementation of the *Hajj* according to Legal of the Republic of Indonesia Number 13 Year 2008 about the Organization of *Hajj* and Government Regulation of the Republic of Indonesia Number 79 Year 2012 about the Implementation of the 2008 *Hajj* Administration.

Regional regulations in principle reinforce matters that have not been regulated technically in the Legal of the Republic of Indonesia Number 13 Year 2008 about the Organization of *Hajj* primarily concerning local costs. The law mandates that local costs be borne by the regional government. With the existence of regional regulations synchronization will occur. The community will be helped in the process of organizing the *Hajj* and the government will be clear in determining various policies related to the *Hajj*. With the existence of Regional Regulations, the existence of TPHD and PPIH formed by the head of the region will be clear and have a standard legal umbrella for implementation in the field. In addition, Regional Regulations are also very important, especially for regions that do not have *Hajj* embarkation. There will be a lot of operational costs that must have a legal umbrella relating to the implementation of the *Hajj*.

The need for Regional Regulations in each region is intended so that the implementation of the *Hajj* pilgrimage in the region can be optimal and realize the implementation of an orderly, smooth, safe and comfortable pilgrimage. Regional governments can provide services for pilgrims who include health checks,

debriefing, and transportation whose costs are borne by the regional government through the APBD.

D. Conclusion

From the above discussion it can be concluded that the implementation of *Hajj* in Indonesia was carried out by the Central Government through the Ministry of Religious Affairs based on the *Hajj* Administration Law. The coordinator of the implementation of the pilgrimage in some areas are *Bupati* or *Walikota* (Regent). The 2008 *Hajj* Administration Law regulates a series of activities to manage the implementation of the *Hajj* which include the formation, services and protections of pilgrims from the country, while in Saudi Arabia, and when returning to the homeland. The implementation of the pilgrimage must be directed at continuous quality improvement. Legal protection is essential to the subject and object of law in a legal state. Law as a joint rule for each citizen. Relations between fellow legal subjects will occur a reciprocal relationship between citizens and citizens, and citizens with the community represented by the state that will give birth to rights and obligations. Legal protection is given to legal subjects in the form of legislation. The direction of the pilgrimage arrangement should be to provide protection for pilgrims in the process of administering the pilgrimage both in the homeland and in the holy land. Each region must be committed in organizing the pilgrimage in terms of the cost of facilitation for the pilgrimage starting from the cost of departure all through some regions to *Hajj* Embarkation and from *Hajj* Embarkation back to the regions. The legal cost must be made through a Regional Regulation; thus it has a strong legal basis. *Hajj* pilgrims are local people, so the regional government must provide a legal protection through Regional Regulations. Regional Regulations also

serve as policy instruments in implementing a broad regional autonomy responsibly, as well as harmonizing various interests.

BIBLIOGRAPHY

- Alfitri. "Religion and Constitutional Practices in Indonesia: How Far Should the State Intervene in the Administration of Islam?" *Asian Journal of Comparative Law*, January 9, 2019, 1–25. <https://doi.org/10.1017/asjcl.2018.20>.
- Alqahtani, Amani S., and et.al. "Australian Hajj Pilgrims' Infection Control Beliefs and Practices: Insight with Implications for Public Health Approaches." *Journal Travel Medicine and Infectious Disease* Vol. 17, no. 1 (2015).
- Azhary, M. Tahir. *Negara Hukum: Suatu Studi Tentang Prinsip-Prinsipnya, Dilihat Dari Segi Hukum Islam, Implementasinya Pada Periode Negara Madinah Dan Masa Kini*. Bogor: Kencana, 2003.
- Baharoon, Salim, and et.al. "Severe Sepsis and Septic Shock at the Hajj: Etiologies and Outcomes." *Journal Travel Medicine and Infectious Disease* Vol. 7, no. 1 (2009).
- Clingingsmith, David, Asim Ijaz Khwaja, and Michael Kremer. "Estimating The Impact of The Hajj: Religion And Tolerance In Islam's Global Gathering." *The Quarterly Journal of Economics*, August 2009.
- Fadjar, A. Mukthie. *Tipe Negara Hukum*. Malang: Bayumedia Publishing, 2003.
- Fahham, Achmad Muchaddam. "Penyelenggaraan Ibadah Haji: Masalah Dan Penanganannya." *Jurnal Kajian* Vol. 20, no. 3 (September 2015).
- Hamzani, Achmad Irwan. "Perlindungan Hukum Terhadap Harta Benda Wakaf Sebagai Aset Publik Di Kecamatan Wiradesa Kabupaten Pekalongan." *Jurnal Ijtihad* Vol. 16, no. 2 (2016). <https://doi.org/DOI:10.18326/ijtihad.v16i2.159-177>.
- . "Pengembangan Model Perlindungan Hukum Terhadap Harta Benda Wakaf Sebagai Aset Publik Di Kecamatan Wiradesa Kabupaten Pemalang." *Jurnal Harmoni* Vol. 15, no. 1 (December 2016).

- . “Towards Indonesia As A State Law Be Happiest People.” *Journal International Journal of Business, Economics and Law* Vol. 16, no. 4 (2014).
- Hidayatulloh, M. Taufik. “Implementasi Bimbingan Manasik Haji Oleh Kantor Kementerian Agama Di Kabupaten Gorontalo.” *Jurnal SmaRT* Vol. 02, no. 02 (December 2016).
- Latupono, Barzah. “Perlindungan Hukum Dan Hak Asasi Manusia Terhadap Pekerja Kontrak (Outsourcing) Di Kota Ambon.” *Jurnal Sasi* Vol. 17, no. 3 (September 2011).
- Mehfooz, Musferah, Fatima Javaid, and Iffet Khalid. “Similarity in the Philosophy of Worship in Torah and Quran.” *Journal of Islamic Studies and Culture* Vol. 2, no. 2 (June 2014).
- Muchsin. “Perlindungan Dan Kepastian Hukum Bagi Investor Di Indonesia.” Tesis, Magister Ilmu Hukum Program Pascasarjana Universitas Sebelas Maret, 2003.
- Nidjam, Achmad. “Akuntabilitas Informasi Biaya Penyelenggaraan Haji.” *Jurnal Ilmu Administrasi* Vol. 14, no. 1 (June 2017).
- . “Efektifitas Prosedur Pendaftaran Haji Melalui Rekayasa Ulang Proses Bisnis.” *Jurnal Penamas* Vol. 28, no. 03 (December 2015).
- Prabowo, M. Shidqon. “Perlindungan Hukum Jama’ah Haji Indonesia Dalam Perspektif Perlindungan Konsumen.” *Jurnal Ilmu Hukum Litigasi* Vol. 15, no. 1 (April 2014).
- Pujiyati, Sri. “Analisis Kepuasan Jamaah Haji Tahun 2011/1432 H Terhadap Kualitas Pelayanan Pemerintah Studi Kasus Jamaah Haji Kota Pangkalpinang.” *Jurnal Bisnis Dan Manajemen Eksekutif* Vol. 1, no. 1 (2014).
- Rodiyah. “Aspek Demokrasi Pembentukan Peraturan Daerah Dalam Perspektif Socio Legal.” *Jurnal Masalah-Masalah Hukum* Vol. 41, no. 1 (2012).
- Soekanto, Soerjono. *Pengantar Penelitian Hukum*. Jakarta: UI Press, 1984.

- Sopa, and Siti Rahmah. "Studi Evaluasi Atas Dana Talangan Haji Produk Perbankan Syariah Di Indonesia." *Jurnal Ahkam* Vol. XIII, no. 2 (July 2013).
- Wasitaatmadja, Fokky Fuad. *Filsafat Hukum: Akar Religiositas Hukum*. Jakarta: Kencana, 2015.
- Wilder-Smith, Annelies, and et.al. "Meningococcal Carriage in Umra Pilgrims Returning from Saudi Arabia." *Journal of Travel Medicine* Vol. 10, no. 3 (2003).
- Zubaedi. "Analisis Problematika Manajemen Pelaksanaan Haji Indonesia; Restrukturisasi Model Pengelolaan Haji Menuju Manajemen Haji Yang Modern." *Jurnal Manhaj* Vol. 4, no. 3 (December 2016).